



OFFICE OF  
INSURANCE COMMISSIONER

TECHNICAL ASSISTANCE ADVISORY

T 2005-05

TO: All Health Carriers

SUBJECT: The Anti-Discrimination Provision of RCW 48.43.035 (1) as Applied to Carriers that Offer Health Benefit Plans to Associations, Trusts, and Member Governed Groups

DATE: May 11, 2005

The Office of the Insurance Commissioner ("OIC") is issuing this Technical Assistance Advisory ("TAA") to assist carriers in complying with RCW 48.43.035(1) as it applies to offering health benefit plans to groups such as Associations, Trusts, and Member Governed Groups (hereinafter collectively referred to as "Association(s)").

RCW 48.43.035(1) states: "All health carriers shall accept for enrollment any state resident within the group to whom the plan is offered and within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2)." This statute is sometimes referred to as an anti-discrimination provision. It prohibits discrimination not only against individual health plan participants, but also against members of an Association.

As applied to Associations, the "group to whom the plan is offered" in RCW 48.43.035(1) is the Association. Pursuant to this statute, a health carrier may not discriminate against any state resident within the Association. For example, each Washington resident within the Association must be offered any product that is offered to other Washington residents in the Association. For Associations composed of employer-members, each Washington employer within the group must have the same opportunity as other Washington employer-members to select from all the health plans offered to any other member in the Association. Discrimination among employer-members, including discrimination based on the number of employees of the member, is prohibited under RCW 48.43.035(1). This interpretation of a carrier's obligations has been the position of the OIC and was recently affirmed by the Thurston County Superior Court in *Regence Blueshield v. State of Washington, Office of Insurance Commissioner*, Case No. 04-2-01761-8. This interpretation is also consistent with the exemption of Association group health plans from small group requirements pursuant to RCW 48.21.047, 48.44.024 and 48.46.068. For such plans, carriers must follow large group requirements, which include non-discriminatory treatment of all Washington residents in the group.

Carriers should review their Association plans for compliance with RCW 48.43.035 and this TAA. Discrimination in the offering of Association plans will be subject to examination by the OIC. If carriers have questions about bringing their plans into compliance or other questions concerning this TAA, please contact Donna Dorris, Healthcare Manager, Rates and Forms Division, at (360) 725-7119 or [Donnad@oic.wa.gov](mailto:Donnad@oic.wa.gov).